

Mr. Wendell Rivera-Ruberto
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U.S. DISTRICT COURT
SAN JUAN, P.R.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
SAN JUAN DIVISION

WENDELL RIVERA-RUPERTO, *
Petitioner, *
V. *
UNITED STATES OF AMERICA, *
Respondent. *

Civil No. _____
Criminal No. 3:10-CR-344-001(PG)
Criminal No. 3:10-CR-356-001(PG)
Criminal No. 3-CR-342-5(CCC)

MOTION
TO VACATE, SET ASIDE OR CORRECT SENTENCE AND JUDGMENT
PURSUANT TO 28 U.S.C. §2255(A)

1. NAME AND LOCATION OF THE COURT:

- a. District of Puerto Rico
- b. Federal Building
- c. Carlos Avenue
- d. Hato Rey, PR. 00918-1767

2. DATE OF JUDGMENT AND CONVICTION:

- a. First Trial; October 16, 2012
- b. Second Trial: July 30, 2013

3. LENGTH OF SENTENCE: One Hundred and Sixty-one years and 10 months

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4. NATURE OF THE OFFENSES INVOLVED:

Six Counts of Conspiracy with the Intent To Distribute in violation of 21 U.S.C. §841-§846:

Six Counts of Possessing a Firearm During and in Relation to a Drug Crime in violation of 18 U.S.C. §924(c) et. seq:

One Count of Possession of a Firearm with an obliterated Serial Number:

5. NATURE OF THE PLEA: Not Guilty

6. TYPE OF PROCEEDING: Jury Trial

7. DID YOU APPEAL: [Yes]

8. NAME OF THE COURT:

a. First Circuit

b. Docket No. 13-2017

c. Results: Affirmed

d. Date of Results: January 13, 2017

e. Citation: United States V. Rivera, 852 F.3d. 1 (1st. Cir. 2017)

f. ~~Grounds~~ Raised:

1. Whether The District Court Erred in not making a LAFLER Inquiry;
2. Whether The District Court Erred By Not Addressing The Sentence Manipulation Factors Sua Sponte;
3. Whether The ("161") Year Sentence Imposed Violated The Eighth Amendment;
4. Whether The District Court Erred By Not Properly Instructing The Jury On The 924(c) Count.

9. DID YOU FILE A PETITION FOR CERTIORARI: [Yes]

a. Docket Number: 18-5384

b. Results: Denied

c. Citation: Rivera-Ruperto V. United States, 2019 U.S. Lexis 1569

d. Grounds Raised:

Whether The Government Committed Sentencing Manipulation
That requires Reversal:

Whether The ("161") Years Violates The Eighth Amendment:

10. ANY OTHER FILED APPEALS OR MOTIONS OR PETITIONS BEEN FILED IN RELATION
TO THE JUDGMENT AND CONVICTION: [no]

11. GROUND ONE:

Counsel Provided Ineffective Assistance During the Pre-Trial Stage
of The Proceedings of This Case In Violation of His Sixth Amendment:
To The Constitution and Laws of The United States:

A. SUPPORTING FACTS:

Defense Counsel's failures to seek dismissal of all three
indictments in this case was deficient performance, because has counsel bothered
to research the law in relation to the facts, he would have discovered "that"
Congress did not authorize criminal prosecution of fake narcotics, regardless of
the ("FBI") intent and proof of that fact is easily discerned in the Statutory
drug formulary listings of the provisions, and counsel's failures lead to the
("161") year sentence, that could have been avoided, amounting to prejudice as
a result that petitioner is convicted of a non-offense, having nothing to do
with interstate commerce, of which the provision is built around and ["all"]
lawyers should know that fact, based upon the multiple challenges against 841
Constitutionality.

Likewise, this also applies to the §924(c) offenses as well, because Congress intended that an actual drug offense be committed,, not being manufactured charges for the sake of a federal agency's program, which does not supplement the legislatures intent, and counsel's failure to argue this point was also deficient performance, amounting to prejudice, because all indigent defendants are entitled to a constitutional defense, and had counsel brought this claim, there is a likelihood, that the outcome would have been different as the Government would have been force to dismiss.

12. GROUND TWO:

Movant's Conviction and Sentence under Section §841 Et. Seq. Is Invalid on Its Face and As-Applied To The Drug Act's Intent:

B. SUPPORTING FACTS:

The petitioner is actually innocence of a drug crime, because the Narcotics Act does not authorize the Government under the Commerce Clause of of the Constitution and Laws of the United States to seek a prosecution no any fictitious transactions dealing with fake substances, regardless of the ("FBI") intent, where the legislative history of the Act does not permit Respondent or the courts to judiciallt amend a provision of Congress under the guise of legal interpretations and Law Enforcement needs, in light of the fact that the Movant has no drug convictions, nor did he purchase a real narcotic substance or sold any drugs personally.

13. GROUND THREE:

Movant's Conviction and Sentence under Section §924(c) Is Constitutionally Infirm As-Applied To The §841 Conviction:

C. SUPPORTING FACTS:

The petitioner is equally actually innocent of using a firearm during and in relation to a real drug offense, because no narcotics was bought or sold during the incidents, because the prosecution was manufactured by federal officers seeking promotions using deceptive practices Congress never approved, in

addition to the fact that there is ["no"] commerce clause violation involved, thereby, meaning the Government and the Courts was without jurisdiction to pursue the charges and conviction herein.

14. GROUND FOUR:

The Government Committed Prosecutorial Misconduct By Pursuing a Non-Existing Criminal offense:

D. SUPPORTING FACTS:

Counsel for the United States committed fraud upon the court and the Taxpaying public, because he and his minions manufactured a case on an innocent citizen under the fiction of rooting out corruptions in the 'Puerto Rico Police Department, and abusing the Firearm and Narcotics Statutes in any manner not consistent with Congressiinal authorization, and lying to the jurors about the Government's jurisdiction over a fake crime, the Respondent and his Federal Agents created on a person not predispose to be a drug trafficker to violate the Laws of the United States until a police officer who obviously has somekind of animus towards Movant, harrassed the undersigned with friendship to act as a security guard during the fraudulent events, in violation of the Fifth Amendment:

15. GROUND FIVE:

The Court Committed Judicial Misconduct By Allowing A False Prosecution To Proceed on A Fake Drug and Firearm Offense:

E. SUPPORTING FACTS:

The Court acted contrary to its duty under the Constitution and Laws of the United States to show equal justice under the law, by favoring those Governmental Officials legal malfeasance in seeking prosecution against innocent Citizens on fake drug and firearm offenses they manufactured, and the court had actually defended the United States position by abusing the motion in limine to hide this fact from both the Grand Jury and trial Jurrors, thereby, abandoning its

oath of office, as a form of treason, and the court should have recused itself if the tribunal was unable to fairly dis-charged its duties towards us Walmart types and poor class Americans:

16. GROUND SIX:

Section §922(K) Is Unconstitutional Because It Has Nothing To Do With Interstate or Foreign Commerce:

F. SUPPORTING FACTS:

Subsection §922(k) is invalid on its face, because it has not one thing to do with interstate commerce, especially, in light of the fact that the Statute is under the Federal Firearm Felony in Possession Provision Acts or the fact that petitioner is not a felon, before this prosecution, and the fact that once a commercial article leaves commerce, the United States authority end 's as a matter of Law, otherwise, the Government violates the Tenth Amendment seperation of powers doctrine.

17. ANY OTHER APPEALS OR PETITIONS PENDING IN OTHER COURTS RELATED TO THIS CASE: ["no"]

18. NAME AND ADDRESS OF EACH ATTORNEY WHO REPRESENTED THE MOVANT:

A. Preliminary Hearing: Mr. Juan F. Matos de Juan

B. Arraignment: Mr. Juan F. Matos de Juan

C. Trial: Mr. Juan F. Matos de Juan

D. Sentencing: Mr. Jaun F. Matos de Juan

E. Address: Road 19, #1353

F. State: Guaynabo, Puerto Rico, 00966

H. APPEAL: Mr. H. Manuel Hernandez

I. Address: 620 East Club Circle

J. State: Longwood Florida, 32779

19. WHERE YOU SENTENCE ON MORE THAN ONE INDICTMENT: ["yes"]

20. ARE THERE ANY FUTURE SENTENCES TO BE SERVED: ["NO"]

21. TIMELINESS OF THE MOTION:

The Movant's application is timely, because the Supreme Court of the United States, did not deny petitioner's Certiorari until February 25, 2019.

In addition to the above, the Government made sure to send the Movant to an institution that is known for its successive lockdowns, obstructing and harrassing inmate access to the law library, hindering legal mail or client attorney consultations, unlawfully opening legal mail outside the presence of the inmate under the fiction of possible drug introductions, which staff furthermore illegally photocopy the contents, and steal the envolops its cane in, not counting the fact, that staff will not allow inmates from aiding each other who are on a seperate side of the general population, due to the yard sepration program staff has enacted by Memorandum only, but not approve by Congress or the U.S. Attorney General Office, moreover, the Bureau of Prisons has eliminated the Unicorn Prison Factories at the Penitentiary Level, and rehoused them at Illegal Alien Detention Prisons, besides the fact that the cost of living has substancially increase with no pay increases in the last ("40") years for inmates, who now has to purchase all legal supplies and equipment to type their motions or briefs, among other things petitioner could mention, that is designed to tripwire a default in collateral matters.

The One year statute of limitations under section §2255(f) is facially invalid, because the Justice Department requested its implementation to undermine the Constitution and Laws of the United states by judicial fiat, where official interferences makes complainces impracticible, when it is combined with these corrupt lawyers who claim thay are not authorized to provide criminal case files to their clients, under the fiction of prison security to protect inmates from assualt and battery or worst, they Bureau of prisons created to prevent or discourag@ post conviction litigation.

PRAYER FOR RELIEF

Wherefore, the Movant prays that this court will vacate, set aside both his sentences and convictions in the interest of justice, because Mr. Rivera was never a Puerto Rican Police Official and the substances was not any narcotics listed under the Control Substance Act.

Dated:

Dated:

Respectfully Submitted

Mr. Wendell Rivera-Ruperto, Pro-se

VERIFICATION UNDER THE PENALTY OF PERJURY

I, Wendell Rivera-Ruperto, declare (or certify, verify, or state) under 28 U.S.C. §1746, that the foregoing is true and correct to the best of my knowledge.

Dated:

Mr. Wendell Rivera-Ruperto, Affiant

NOTARY PUBLICSTATE OF KENTUCKY

SS:

COUNTY OF MACCREARY

Sunscribed and sworn before me, is the above affiant.

IN AND FOR THE STATE OF KENTUCKY

My Commission Expires on February
7th, 2023 :